REMARKS

Claim 16 has been canceled. Thus, claims 1-5, 8-12, and 15 are pending in the present application.

In the Office Action, claims 1-4 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Tiedemann, et al (WO 98/35514). Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Gilhousen (U.S. Patent No. 5,751,761). Claims 8-11 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Schilling (U.S. Patent No. 5,410,568). Claim 12 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Schilling and further in view of Gilhousen. Claim 15 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann. The Examiner's remaining rejections are respectfully traversed.

With regard to independent claims 1 and 8, Applicant describes and claims, among other things, a method for partitioning code space in a communication system that includes dividing a code space into at least two subspaces. The codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication. With particular regard to independent claim 1, the codes in the second subspace are assigned to one user for data communication. With particular regard to independent claim 8, the codes in the second subspace are assigned to one of a plurality of users on a timeshare basis for data communication. By partitioning the code space in the claimed manner, the efficiency of systems supporting both voice and data users may be increased.

The Examiner alleges at lines 6-8 on page 10 of the FINAL Office Action that Tiedemann describes transmitting voice traffic over a primary channel and data traffic over one

or more secondary channels. Applicant respectfully disagrees and submits that the Examiner's allegation lacks record support and is based on an erroneous reading of Tiedemann.

Tiedemann is directed to improving the efficient use of a forward link by transmitting data traffic during periods of low voice activity. In particular, Tiedemann teaches the forward link may be used to transmit voice and data traffic, and that demand for bandwidth on the forward link changes over time due to voice activity. Thus, Tiedemann teaches that the efficiency of the forward link may be improved by transmitting data traffic during periods of low voice activity. To avoid degradation in the quality of the voice communication, Tiedemann teaches that the data transmission should be dynamically adjusted to match to forward link capacity of the cell. See Tiedemann, page 5, ll. 16-21.

In the dynamic data transmission scheme taught by Tiedemann, data transmission occurs over a primary code channel, which may be supplemented by one or more secondary code channels. The primary code channel is used to transmit unscheduled transmissions of small amounts of data. The secondary code channels are used for scheduled transmission of data traffic at high rates. See Tiedemann, page 7, ll. 6-23. Thus, the primary and secondary channels described in Tiedemann are both used for data transmission and neither channel is used to transmit voice, as suggested by the Examiner.

For at least the aforementioned reasons, Applicant respectfully submits that Tiedemann does not teach or suggest dividing a code space into at least two subspaces, wherein the codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication. Thus, Applicant respectfully submits that claims 1-4 are not anticipated by Tiedemann and requests that the Examiner's rejections of these claims be withdrawn.

Applicant also submits that the Examiner has failed to present a *prima facie* case that the pending claims are obvious in view of the cited references. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, Tiedemann does not teach or suggest dividing a code space into at least two subspaces, wherein the codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication. In contrast, the primary and secondary channels described by Tiedemann are both used for data transmission. The Examiner relies on Gilhousen and Schilling for various teachings not present in Tiedemann. However, the secondary references do not remedy the fundamental deficiency of the primary reference.
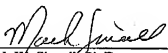
Moreover, Applicants submit that Tiedemann appears to teach away from the present invention. As discussed above, Tiedemann teaches that both the primary and secondary code channels are used to transmit data to improve the efficiency of a forward link by transmitting data traffic during periods of low voice activity Thus, Tiedemann appears to teach away from dividing a code space into at least two subspaces, wherein the codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication, as set forth in the present invention. It is by now well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. *See, inter alia, In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986).

For at least the aforementioned reasons, Applicant respectfully submits that claims 1-5 and 8-15 are not obvious over the cited references, either alone or in combination, and request that the Examiner's rejections of claims 5, 8-12 and 15 under 35 U.S.C. § 103(a) be withdrawn.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

Date: 7/7/04

Mark W. Sincell, Ph.D.
Reg. No. 52,226
Williams Morgan & Amerson, P.C.
10333 Richmond Avenue, Suite 1100
Houston, TX 77042
(713) 934-7000
(713) 934-7011 (Fax)

AGENT FOR APPLICANT